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Appl. No. 10/612,254
Armdt. Dated October 13, 2006
Reply to Office Action of July 13, 2006

• • R E M A R K S / A R G U M E N T S • •

The Office Action of July 13, 2006 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, new dependent claims 21 and 22 have been added which recite that the support arm includes a tire mounting bracket on a central portion thereof.

Support for this change to the claims can be readily found in the drawings which illustrates tire mounting bracket 3.

Entry of the changes to the claims is respectfully requested.

Claims 1, 3-9, and 11-22 are pending in this application.

Claims 1, 3-9 and 11-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,760,965 to Chandler.

The Examiner has relied upon Chandler as disclosing:

...a support arm 23 having an axis and capable of supporting a spare tire, and further discloses an upper planar guide plate 53 attached to an upper tubular member 27F, lower planar guide plate 59 attached to a lower tubular assembly (61 in FIG. 7) wherein an upper plate is coupled to a lower plate for relative rotational movement for rotating an arm 23 about a common axis and a support arm central axis (see FIGS 16-17).

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It is noted that previously the prosecution focused on the difference between "planar" structures (claimed by applicant) and "tubular" structures (taught by U.S. Patent No. 3,648,867 to Beavers).

That issue was resolved, but until applicant had to go through the expense of filing an appeal brief.

Presently the Examiner is taking the position that Chandler teaches "a lower tubular assembly (61 in FIG. 7)."

However, the structure identified by reference numeral 61 in Chandler is a "plate" structure and not a "tubular" structure as the Examiner states.

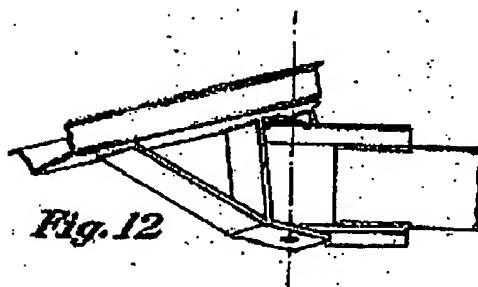
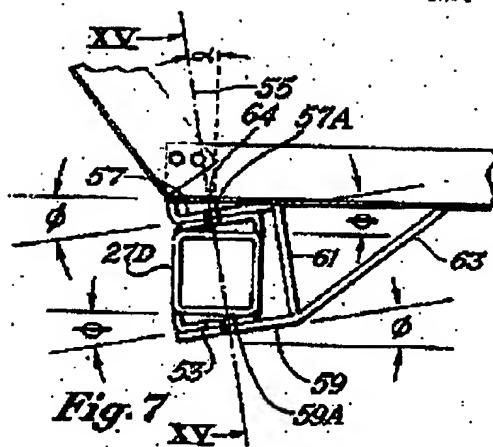
At column 4, lines 1-14 Chandler teaches:

A plate 59, supported by plates 61 and 63, which also are welded to the base of the channel 23, is spaced below the plate 57 and parallel thereto.

These "plate" structures are shown in several of the drawings of Chandler as follows:

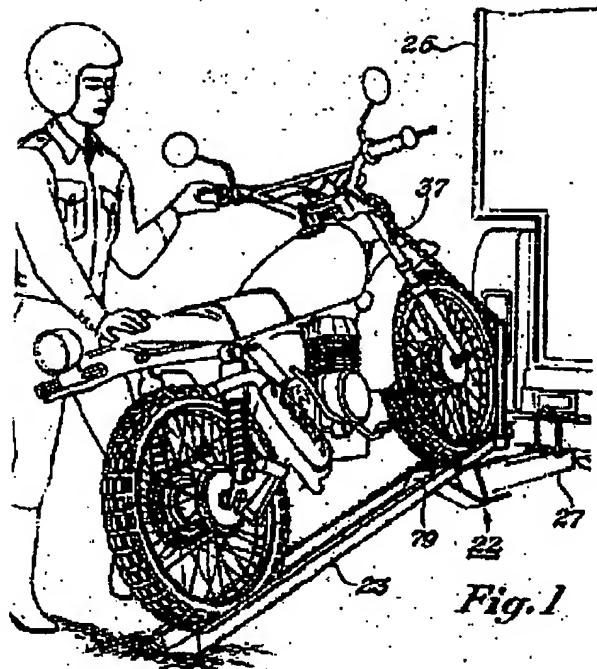
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The Examiner will note that there is no way to interpret plate 61 of Chandler as being a tubular structure or as applicant's claimed "upper tubular member."

Further it is noted that applicant claims the upper tubular member as being a separate element from the support arm. Accordingly, the Examiner cannot interpret plates 61 and 63 together with channel 23 as defining a tubular structure (to which the free end of the channel has to be coupled according to applicant's claims).

The Examiner is accordingly requested to reconsider and withdraw the outstanding rejection of the claims based upon Chandler.

In response to the Examiner's statement that:

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...although Applicant recites a spare tire carrier Applicant merely recites an arm with the body of claim 1 and does not positively recite structure that defines spare tire engaging structure.

new claims 21 and 22 have been added which recite that the support arm includes a tire mounting bracket on a central portion thereof.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot maintain reliance upon the prior art as required under 35 U.S.C. §102 as anticipating applicant's claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicant's patent counsel at the telephone number given below to discuss such issues.

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To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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